

372. GCI argues that our proposed requirement regarding drive tests demonstrating data speeds “to the network” considers only data speeds from towers to the mobile user and therefore could be satisfied by networks with insufficient “middle mile” capacity to deliver the same data speeds to and from the Internet.<sup>630</sup> We do not agree with GCI’s interpretation of the proposed rule but, in light of their interpretation, take this opportunity to clarify what “to the network” means for these purposes. “To the network” means to the physical location of core network equipment, such as the mobile switching office or the evolved packet core. We envision that a test server utilized to conduct drive tests will be at such a central location rather than at a base station, so that the drive test results take into account the effect of backhaul on communication speeds.

373. AT&T proposes that instead of requiring support recipients to meet fixed minimum requirements, we should “permit recipients to follow standard industry benchmarks (i.e., data rates should be no lower than x percent of the industry average).”<sup>631</sup> Such an approach would enable the relevant metrics to evolve along with industry practices. However, in the context of non-recurring funding, we believe that setting a clear and consistent measurement of service better achieves the public interest than allowing the measurement to change depending on industry practice.

374. CTIA argues against “overly burdensome performance requirements” and contends that providers’ performance is best measured by participation of new broadband customers in previously unserved areas and not by static metrics.<sup>632</sup> Expanding mobile coverage to new areas will benefit not only new customers in previously unserved areas but also customers in other areas who either want to communicate with those in the previously unserved area or travel through it. However, these benefits will depend on a minimum level of functional service in the newly covered area. We conclude that the public interest mandates that when public support is provided for a service, we should require that a minimum level of service be provided.

### (c) Collocation

375. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to encourage future competition in the market for 3G or better services in geographic areas being supported by the Mobility Fund.<sup>633</sup> As some have observed, the incompatibility of existing 3G technologies, e.g., CDMA and GSM, limits the benefits of an expanded network to users of the same technology.<sup>634</sup> Consequently, the Commission proposed that any new tower constructed to satisfy Mobility Fund performance obligations provide the opportunity for collocation and sought comment on whether to require any minimum number of spaces for collocation on any new towers and/or specify terms for collocation.<sup>635</sup>

376. *Discussion.* We will require that recipients of Mobility Fund support allow for reasonable collocation by other providers of services that would meet the technological requirements of the Mobility Fund on newly constructed towers that Mobility Fund recipients own or manage in the unserved area for which they receive support. This includes a duty: (1) to construct towers where reasonable in a manner that will accommodate collocations; and (2) to engage in reasonable negotiations on a not unreasonably discriminatory basis with any party that seeks to collocate equipment at such a site

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<sup>630</sup> *Id.*

<sup>631</sup> AT&T *Mobility Fund NPRM* Comments at 17.

<sup>632</sup> CTIA *Mobility Fund NPRM* Comments at 10.

<sup>633</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,728, para. 36.

<sup>634</sup> See *id.* at 14,723, para. 15. See also Alaska Telephone *Mobility Fund NPRM* Comments at 3; CTIA *Mobility Fund NPRM* Comments at 7-9.

<sup>635</sup> *Mobility Fund NPRM* at 14,728, para. 36.

in order to offer service that would meet the technological requirements of the Mobility Fund.<sup>636</sup> Furthermore, we prohibit Mobility Fund recipients from entering into arrangements with third parties for access to towers or other siting facilities wherein the Mobility Fund recipients restrict the third parties from allowing other providers to collocate on their facilities.<sup>637</sup> We conclude that these collocation requirements are in the public interest because they will help increase the benefits of the expanded coverage made possible by the Mobility Fund, by facilitating service that meets the requirements of the Mobility Fund by providers using different technologies.<sup>638</sup>

377. Commenters generally recognize that requiring collocation potentially will benefit competition.<sup>639</sup> While most commenters find a collocation requirement to be “acceptable” or even preferable, many also agree that the Commission should not specify a minimum number of spaces for collocation on new towers.<sup>640</sup> AT&T contends that the Commission should limit any collocation requirement to a requirement for good faith negotiation on a non-discriminatory basis without additional required terms.<sup>641</sup> We agree with commenters that attempting to specify collocation practices that are applicable in all circumstances may unduly complicate efforts to expand coverage, and thus decline to adopt more specific requirements for collocation by any specific number of providers or require any specific terms or conditions as part of any agreement for collocation.

**(d) Voice and Data Roaming<sup>642</sup>**

378. *Background.* In the *Mobility Fund NPRM*, the Commission also proposed that Mobility Fund recipients be required to provide data roaming on reasonable and not unreasonably discriminatory terms and conditions on the mobile broadband networks that are built through Mobility Fund support.<sup>643</sup>

379. *Discussion.* We will require that recipients of Mobility Fund support comply with the Commission’s voice and data roaming requirements on networks that are built through Mobility Fund support. Subsequent to the *Mobility Fund NPRM*, the Commission adopted rules that create a general mandate for data roaming.<sup>644</sup> Specifically, we require that recipients of Mobility Fund support provide roaming pursuant to section 20.12 of the Commission’s rules on networks that are built through Mobility Fund support.<sup>645</sup>

<sup>636</sup> We do not require Mobility Fund recipients to permit collocation for other purposes.

<sup>637</sup> We recognize that many towers on which communications licenses locate their facilities are owned and managed by third parties, and we do not impose any affirmative obligations on the owners of such towers.

<sup>638</sup> We clarify that we do not require Mobility Fund recipients to favor providers of services that meet Mobility Fund requirements over other applicants for limited collocation spaces.

<sup>639</sup> PCIA *Mobility Fund NPRM* Comments at 1, 4; Sprint *Mobility Fund NPRM* Comments at 7. *But see* ITTA *Mobility Fund NPRM* Comments at 12-13 (“ITTA urges the Commission to maintain focus on the goal of extending coverage, a pursuit that should not be confused with expanding competition.”).

<sup>640</sup> AT&T *Mobility Fund NPRM* Comments at 15.

<sup>641</sup> *Id.*

<sup>642</sup> Commissioner McDowell does not join in this subsection and would not impose a data roaming requirement for the reasons stated in his dissenting statement in *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services*, WT Docket No. 05-265, Second Report and Order, 26 FCC Rcd 5411, 5483-84 (2011) (*Roaming Second Report and Order*).

<sup>643</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,728, para. 36.

<sup>644</sup> *See, generally, Roaming Second Report and Order*, 26 FCC Rcd 5411.

<sup>645</sup> 47 C.F.R. § 20.12.

380. Some commenters responding to the *Mobility Fund NPRM* contend that there is no need to adopt a data roaming requirement specifically for Mobility Fund recipients because our general data roaming rules already address the issue or that such a requirement is unrelated to the goals of the Mobility Fund.<sup>646</sup> We disagree. Our general policy of distributing federal universal service support to only one provider per area raises competitive issues for those providers not receiving funds. As a result, we believe it is appropriate to attach roaming conditions even though generally applicable requirements also exist. Making compliance with these rules a condition of universal service support will mean that violations can result in the withholding or clawing back of universal service support – sanctions based on the receipt of federal support – that would be in addition to penalties for violation of our generally applicable data roaming rules. Moreover, in addition to the sanctions that would apply to any party violating our general requirements, Mobility Fund recipients may lose their eligibility for future Mobility Fund participation as a consequence of any violation. Recipients shall comply with these requirements without regard to any judicial challenge thereto.

381. Other commenters contend that our roaming requirements will not mitigate the competitive advantage that recipients of Mobility Fund support receive from the additional coverage the funding supports.<sup>647</sup> In light of the public interest in expanding coverage, we conclude that our roaming requirements are sufficient to balance against any competitive advantage Mobility Fund recipients obtain.

382. Consistent with this Order, any interested party may file a formal or informal complaint using the Commission's existing processes if it believes a Mobility Fund recipient has violated our roaming requirements.<sup>648</sup> As noted, the Commission intends to address roaming-related disputes expeditiously.<sup>649</sup> The Commission also has the authority to initiate enforcement actions on its own motion.

#### (e) Reasonably Comparable Rates

383. *Background.* The Commission sought comment in the *Mobility Fund NPRM* on how to implement, in the context of the Mobility Fund, the statutory principle that supported services should be made available to consumers in rural, insular, and high-cost areas at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>650</sup> Given the absence of affirmative regulation of rates charged for commercial mobile services, as well as the rate practices and structures used by providers of such services, the Commission asked how parties might demonstrate that the rates they charge in areas where they receive support are reasonably comparable to rates charged in urban areas.<sup>651</sup> The Commission further sought input regarding an appropriate standard for “reasonably comparable” and “urban areas” in this context.<sup>652</sup>

384. *Discussion.* We will evaluate the rates for services offered with Mobility Fund Phase I support based on whether they fall within a reasonable range of urban rates for mobile service. The

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<sup>646</sup> AT&T *Mobility Fund NPRM* Comments at 15; Verizon *Mobility Fund NPRM* Comments at 19-20; CWA *Mobility Fund NPRM* Reply at 5.

<sup>647</sup> USA Coalition *Mobility Fund NPRM* Reply at 15.

<sup>648</sup> See, e.g., 47 C.F.R. § 20.12.

<sup>649</sup> *Roaming Second Report and Order*, 26 FCC Rcd at 5449-50, para. 77. As described in the roaming proceeding, Accelerated Docket procedures, including pre-complaint mediation, are among the various dispute resolution procedures available with respect to data roaming disputes. See *id.*, 47 C.F.R. § 1.730.

<sup>650</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,729, para. 38; 47 U.S.C. § 254(b)(3).

<sup>651</sup> *Mobility Fund NPRM* at 14,729, para. 38.

<sup>652</sup> *Id.*

record on this issue was mixed. Some commenters argue that the Commission should require support recipients to certify their compliance with section 254(b)(3), in expectation that nationwide pricing plans will tend to result in carriers offering reasonably comparable rates to those in urban areas.<sup>653</sup> Others propose that the Commission adopt a target for evaluating rates and require that providers offer rates within a particular range of that target figure.<sup>654</sup>

385. To implement the statutory principle regarding comparable rates while offering Mobility Fund Phase I support at the earliest time feasible, the Bureaus may develop target rate(s) for Mobility Fund Phase I before fully developing all the data to be included in a determination of comparable rates with respect to other Connect America Fund support. For Mobility Fund Phase I, we will require recipients to certify annually that they offer service in areas with support at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas.<sup>655</sup> Recipients' service offerings will be subject to this requirement for a period ending five years after the date of award of support. The Bureaus, under their delegated authority, may define these conditions more precisely in the pre-auction process. We will retain our authority to look behind recipients' certifications and take action to rectify any violations that develop.

### c. Mobility Fund Phase I Eligibility Requirements

386. The Commission proposed that to be eligible for Mobility Fund support, entities must (1) be designated as a wireless ETC pursuant to section 214(e) of the Communications Act, by the state public utilities commission ("PUC") (or the Commission, where the state PUC does not have jurisdiction to designate ETCs) in any area that it seeks to serve; (2) have access to spectrum capable of 3G or better service in the geographic area to be served; and (3) certify that it is financially and technically capable of providing service within the specified timeframe.<sup>656</sup> With a limited exception, discussed *infra*,<sup>657</sup> we adopt these requirements.

387. As noted elsewhere, we also adopt a two-stage application filing process for participants in the Mobility Fund Phase I auction, similar to that used in spectrum license auctions, which will, among other things, require potential Mobility Fund recipients to make disclosures and certifications establishing their eligibility. Specifically, in the pre-auction "short-form" application, a potential bidder will need to establish its eligibility to participate in the Mobility Fund Phase I auction and, in a post-auction "long-form" application, a winning bidder will need to establish its eligibility to receive support. Such an approach should provide an appropriate screen to ensure serious participation without being unduly burdensome. Below, we discuss these eligibility requirements and the timing of each.

<sup>653</sup> AT&T *Mobility Fund NPRM* Comments at 15; Sprint *Mobility Fund NPRM* Comments at 9; T-Mobile *Mobility Fund NPRM* Comments at 12.

<sup>654</sup> Greenlining *Mobility Fund NPRM* Comments at 11; ITTA *Mobility Fund NPRM* Comments at 14; Sprint *Mobility Fund NPRM* Comments at 8-9.

<sup>655</sup> We note that Cellular South contends that providing support to one provider per area through the Mobility Fund will result in the supported carrier charging excessively high rates and therefore violates section 254. Cellular South et al. *Mobility Fund NPRM* Comments at 20-21. Given the rules being adopted in this Order, we disagree with Cellular South's factual premise and legal conclusion. The requirement we adopt with respect to reasonably comparable rates is one of the provisions that helps ensure that section 254 will not be violated.

<sup>656</sup> *Mobility Fund NPRM* at 14,731, para. 45.

<sup>657</sup> See *infra* para. 491, 47 C.F.R. § 54.1004(a).

(i) ETC Designation

388. *Background.* The Commission proposed to require that applicants be designated as wireless ETCs covering the relevant geographic area prior to participating in an auction.<sup>658</sup> As an alternative, the Commission asked commenters whether entities that have applied for designation as ETCs in the relevant area should be eligible to participate in an auction.<sup>659</sup> The Commission also sought broad comment on the ETC designation requirements of section 214(e), and how to best interpret all the interrelated requirements of that section in order to achieve the purposes of the Mobility Fund.<sup>660</sup>

389. *Discussion.* We generally adopt our proposal and require that Mobility Fund Phase I participants be ETCs prior to participating in the auction.<sup>661</sup> As a practical matter, this means that parties that seek to participate in the auction must be ETCs in the areas for which they will seek support at the deadline for applying to participate in the auction.

390. By statute, the states, along with the Commission, are empowered to designate common carriers as ETCs.<sup>662</sup> ETCs must satisfy various service obligations, consistent with the public interest. We decline to adopt new federal rules to govern the ETC designation process solely for purposes of designating entities to receive non-recurring support, as suggested by some commenters.<sup>663</sup> In light of the roughly comparable amounts of time required for the Commission and states to process applications to be designated as an ETC and the time required to move from the adoption of this R&O to the acceptance of applications to participate in a Mobility Fund Phase I auction, parties contemplating requesting new designations as ETCs for purposes of participating in the auction should act promptly to begin the process. The Commission will make every effort to process such applications in a timely fashion, and we urge the states to do likewise.

391. Many commenters request that the Commission eliminate or streamline many of the service obligations that apply to ETCs, on ground that these obligations are unrelated to the Mobility Fund and its immediate goals.<sup>664</sup> We do not see this as cause to set aside those obligations. The Mobility Fund will offer existing ETCs support to accelerate the expansion of coverage by current generation wireless networks within their designated service area as a means to meeting their ETC obligations. We are not, however, crafting an alternative to the USF but rather developing a mechanism to effectively use a portion of existing funds to promote the expansion of mobile voice service over current-generation (or better) network technology. Given that current ETCs already have their existing obligations throughout their service area, it would be a step backwards to relieve them of those obligations based on the receipt

<sup>658</sup> *Mobility Fund NPRM* at 14,731, para. 47.

<sup>659</sup> *Id.* at 14,732, para. 48. Pursuant to 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.101(b), an ETC is obligated to provide all of the supported services defined in 47 C.F.R. § 54.101(a) throughout the area for which it has been designated an ETC. Therefore, an ETC must be designated (or have applied for designation) with respect to an area that includes area(s) on which it wishes to receive Mobility Fund support. Moreover, a recipient of Mobility Fund support will remain obligated to provide supported services throughout the area for which it is designated an ETC if that area is larger than the areas for which it receives Mobility Fund support.

<sup>660</sup> *Mobility Fund NPRM* at 14,732, para. 49.

<sup>661</sup> As discussed *infra*, we adopt a narrow exception to permit participation by Tribally-owned or controlled entities that have filed for ETC designation prior to the short-form application deadline. *See infra* para. 491, 47 C.F.R. § 54.1004(a)..

<sup>662</sup> Generally, the states have primary jurisdiction to designate ETCs; the Commission designates ETCs where states lack jurisdiction. *See* 47 U.S.C. § 214(e).

<sup>663</sup> AT&T *Mobility Fund NPRM* Comments at 6-8; Sprint *Mobility Fund NPRM* Comments at 4-5.

<sup>664</sup> Sprint *Mobility Fund NPRM* Comments at 4-5.

of Mobility Fund support. Accordingly, we retain existing ETC requirements and obligations and move forward by adopting our proposal to require that parties be ETCs in the area in which they seek Mobility Fund support.<sup>665</sup>

392. Furthermore, with the narrow exception discussed *infra*, we decline to adopt the alternative of allowing parties to bid for support prior to being designated an ETC, provided they have an application for designation pending.<sup>666</sup> We believe this approach would inject uncertainties as to eligibility that could interfere with speedy deployment of networks by those that are awarded support, or disrupt the Mobility Fund auction. Moreover, requiring that applicants be designated as ETCs prior to a Mobility Fund Phase I auction may help ensure that the pool of bidders is serious about seeking support and meeting the obligations that receipt of support would entail.

(ii) Access to Spectrum

393. *Background.* In order to participate in a Mobility Fund auction and receive support, the Commission proposed in the *Mobility Fund NPRM* that an entity must hold, or otherwise have access to, a Commission authorization to provide service in a frequency band that can support 3G or better services. The Commission sought comment on a number of questions relating to this proposed eligibility requirement.<sup>667</sup>

394. *Discussion.* We require that any applicant for a Mobility Fund Phase I auction have access to the necessary spectrum to fulfill any obligations related to support. Many commenters support this requirement.<sup>668</sup> Thus, those eligible for Mobility Fund Phase I support include all entities that, prior to an auction, hold a license authorizing use of appropriate spectrum, as discussed more fully below, in the geographic area(s) for which support is sought. As suggested by some commenters, we also conclude that the spectrum access requirement can be met by leasing appropriate spectrum, prior to an auction, covering the relevant geographic area(s).<sup>669</sup> We require that spectrum access through a license or leasing arrangement be in effect prior to auction for an applicant to be eligible for an award of support. We also require that whether an applicant claims required access to spectrum through a license or a lease, it must retain access for at least five years from the date of award of Phase I support.<sup>670</sup> For purposes of calculating term length, parties may include opportunities for license and/or lease renewal.

395. Further, we seek to facilitate participation by parties that may make their acquisition of license or their lease of spectrum access contingent on winning support from Mobility Fund Phase I. Accordingly, parties may satisfy the spectrum access requirement if they have acquired spectrum access, including any necessary renewal expectancy, that is contingent on their obtaining support in the auction. Other contingencies, however, will render the relevant spectrum access insufficient for the party to meet our requirements for participation.

396. We reject the suggestion of some commenters that we should use a substantially more relaxed standard that might allow entities to seek to acquire access to spectrum (as a licensee or lessee)

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<sup>665</sup> It is sufficient for purposes of an application to participate in the Mobility Fund Phase I auction that the applicant has received its ETC designation conditioned only upon receiving Mobility Fund Phase I support.

<sup>666</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,732, para. 48.

<sup>667</sup> *Id.* at 14,732-33, paras. 50-53.

<sup>668</sup> CenturyLink *Mobility Fund NPRM* Comments at 8-9; ITTA *Mobility Fund NPRM* Comments at 15-16; MetroPCS *Mobility Fund NPRM* Comments at 11; RTG *Mobility Fund NPRM* Comments at 11.

<sup>669</sup> Verizon *Mobility Fund NPRM* Comments at 24-25; RTG *Mobility Fund NPRM* Comments at 11.

<sup>670</sup> See 47 C.F.R. § 54.1003(b).

only after becoming a winning bidder.<sup>671</sup> For instance, New EA argues that limiting eligibility to only those carriers holding licenses would “reinforce[] incumbent control,” and asserts that a more liberal approach ought not to be problematic given that areas with no mobile broadband “typically have an abundance of fallow spectrum.”<sup>672</sup> We conclude, however, that failing to ensure spectrum access, on at least a conditional basis, prior to entering a Mobility Fund auction would be inconsistent with the serious undertakings implicit in bidding for support. We therefore require applicants to ensure that if they become winning bidders, they will have the spectrum to meet their obligations as quickly and successfully as possible.

397. As noted, in the *Mobility Fund NPRM*, the Commission proposed that entities seeking to receive support from the Mobility Fund must have access to spectrum capable of supporting the required services. The Commission noted that spectrum for use in Advanced Wireless Services, the 700 MHz Band, Broadband Radio Services, broadband PCS, or cellular bands should all be capable of 3G services, and asked if other spectrum bands would be appropriate.<sup>673</sup> The Commission also asked whether it should require that parties seeking support have access to a minimum amount of bandwidth and whether only paired blocks of bandwidth should be deemed sufficient. The few comments we received on these issues generally support requiring that auction participants demonstrate access to spectrum that is adequate to support the services demanded of Mobility Fund providers, but did not provide specifics on what that spectrum should be.<sup>674</sup>

398. T-Mobile noted that carriers with spectrum in lower bands would have an advantage over those with access to higher band spectrum due to propagation characteristics that may make it less costly to provide wireless broadband in rural areas using lower frequencies.<sup>675</sup> While we recognize that access to lower band spectrum, particularly sub-1 GHz spectrum, reduces the cost of build-out,<sup>676</sup> we disagree with T-Mobile that this is an “unfair” advantage in the context of the Mobility Fund. The Mobility Fund is designed to provide support in areas where it is cost effective to do so with the limited available funds. Thus, its ultimate goal is to maximize the number of units covered given the funds available.

399. We agree with commenters that advocate a simple approach to defining what spectrum will establish eligibility for the Mobility Fund. Therefore, we will require entities seeking to receive support from the Mobility Fund to certify that they have access to spectrum capable of supporting the required services. While we decline to restrict the frequencies applicants must use to be eligible for Mobility Fund Support, we note that there are certain spectrum bands that will not support mobile broadband (e.g., paging service). As discussed below in connection with our discussion of application requirements, we will require that applicants identify the particular frequency bands and the nature of the access on which they assert their eligibility for support. We will assess the reasonableness of eligibility certifications based on information we will require be submitted in short- and long-form

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<sup>671</sup> See New EA *Mobility Fund NPRM* Comments at 5-6; NTCH *Mobility Fund NPRM* Comments at 7-8.

<sup>672</sup> New EA *Mobility Fund NPRM* Comments at 6, 8.

<sup>673</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,733, para. 53.

<sup>674</sup> ITTA *Mobility Fund NPRM* Comments at 15-16; TechAmerica *Mobility Fund NPRM* Comments at 3; T-Mobile *Mobility Fund NPRM* Comments at 14.

<sup>675</sup> T-Mobile *Mobility Fund NPRM* Comments at 9.

<sup>676</sup> See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services*, WT Docket No. 10-133, Fifteenth Report, 26 FCC Rcd 9664, 9834-35, para. 293 (2011) (*15th Annual Mobile Wireless Competition Report*).

applications. Should entities make this certification and not have access to the appropriate level of spectrum, they will be subject to the penalties described below.

**(iii) Certification of Financial and Technical Capability**

400. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on how best to determine if an entity has sufficient resources to satisfy Mobility Fund obligations.<sup>677</sup> The Commission also sought comment on a certification regarding an entity's technical capacity.<sup>678</sup> The Commission asked if we need to be specific as to the minimum showing required to make the certification, or whether we can rely on our post-auction performance requirements.<sup>679</sup>

401. *Discussion.* We will require that an applicant certify, in the pre-auction short-form application and in the post-auction long-form application, that it is financially and technically capable of providing 3G or better service within the specified timeframe in the geographic areas for which it seeks support. Given that Mobility Fund Phase I provides non-recurring support, applicants for Phase I funds need to assure the Commission that they can provide the requisite service without any assurance of ongoing support for the area in question after Phase I support has been exhausted.

402. Among commenters, there was no dispute that the Commission should require parties to be financially and technically capable of satisfying the performance requirements.<sup>680</sup> Some contend, however, that there is no need for financial or technical certifications given the requirements bidders must satisfy to qualify as ETCs and to participate in the Mobility Fund.<sup>681</sup> In contrast, one commenter urges that, even before bidding, the Commission should require applicants to submit details about the technology and the network they will use to satisfy Mobility Fund obligations.<sup>682</sup> Another draws a parallel between the Commission and investors, comparing requiring qualifications to due diligence.<sup>683</sup> One commenter proposes requiring applicants to demonstrate that they will bear a fixed percentage of the total costs of extending coverage.<sup>684</sup> Comments also argue against Commission review, suggesting that the Commission's expertise might not be adequate to make the determinations in the process of reviewing applications.<sup>685</sup>

403. We conclude that applicant certifications of qualifications are sufficient, both at the short and long-form application stage. In the context of our spectrum auctions, we have relied successfully on certifications to ensure certain regulatory and legal obligations have been met by the applicants. Notwithstanding the differences between the spectrum license and USF contexts, we conclude that such an approach is appropriate here as well. Taking the time to review the finances and technical capacities of all applicants, particularly at the short-form stage when there may be far more applicants than eventually will receive support, could result in a substantial delay in making Mobility Fund support available for very little gain.

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<sup>677</sup> *Mobility Fund NPRM* at 14,733, para. 54.

<sup>678</sup> *Id.*

<sup>679</sup> *Id.*

<sup>680</sup> *AT&T Mobility Fund NPRM Comments* at 9.

<sup>681</sup> *T-Mobile Mobility Fund NPRM Comments* at 14-15.

<sup>682</sup> *AT&T Mobility Fund NPRM Comments* at 9.

<sup>683</sup> *ITTA Mobility Fund NPRM Comments* at 16.

<sup>684</sup> *MetroPCS Mobility Fund NPRM Comments* at 9-10.

<sup>685</sup> *New EA Mobility Fund NPRM Comments* at 8.



404. Moreover, we elect not to require that Mobility Fund Phase I participants finance a fixed percentage of any build-out with non-Mobility Fund funds.<sup>686</sup> While requiring that Fund recipients put up a share of their own funds for a project may be an effective way to ensure that the recipient has sufficient stake in the project to effect its completion, we do not believe this requirement is needed in light of the other measures we adopt here.

405. Finally, requiring a certification of financial and technical capability is a real additional safeguard. Applicants making certifications to the Commission expose themselves to liability for false certifications. Applicants should take care to review their resources and their plans before making the required certification and be prepared to document their review, if necessary.

**(iv) Other Qualifications**

406. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether it should impose any other eligibility requirements on entities seeking to receive support from the Mobility Fund, including whether there are any steps we should take to encourage smaller eligible parties to participate in the Mobility Fund.<sup>687</sup>

407. *Discussion.* We conclude that, with one exception, we will not impose any additional eligibility requirements to participation in the Mobility Fund. One commenter advocates barring Tier 1 carriers from participation,<sup>688</sup> while another contends that Verizon should not be allowed to participate, given that it already voluntarily relinquished the funds to be disbursed through the Mobility Fund.<sup>689</sup> Other commenters seek to limit eligibility to participate in the Mobility Fund based on other criteria such as labor relations and exclusive handset arrangements.<sup>690</sup>

408. We will not bar any party from seeking Mobility Fund Phase I support based solely on the party's past decision to relinquish Universal Service Funds provided on another basis. We see no inconsistency in Verizon Wireless or Sprint relinquishing support previously provided under the identical support rule – ongoing support provided with no specific obligation to expand voice coverage where it was lacking – and seeking one-time support under new rules to expand voice and broadband service over current generation wireless networks to areas presently lacking such facilities.

409. We also decline to bar any particular class of parties out of concern that they might appear to be better positioned to win Mobility Fund support, for example due to their size. As we have done in the context of spectrum auctions, we expect that our general auction rules and the more detailed auction procedures to be developed on delegated authority for a specific auction will provide the basis for an auction process that will promote our objectives for the Mobility Fund and provide a fair opportunity for serious, interested parties to participate.

410. One commenter questions whether the Mobility Fund should be available to parties in particular areas if the party previously, *i.e.*, without respect to Mobility Fund support, indicated an

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<sup>686</sup> MetroPCS suggests that the Commission require a Mobility Fund recipient to demonstrate that it has the financial capacity to make a substantial matching investment by requiring it to contribute from its own funds, 75 percent of the project costs. In addition, MetroPCS would have us provide Mobility Fund support to a recipient only after the recipient has expended the full amount of its 75 percent share of the project funding, reasoning that such a requirement would provide incentive for the recipient to complete the project quickly. *MetroPCS Mobility Fund NPRM Comments* at 9-10.

<sup>687</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,733, para. 55.

<sup>688</sup> *RTG Mobility Fund NPRM Comments* at 11.

<sup>689</sup> *RCA Mobility Fund NPRM Reply* at 9-10.

<sup>690</sup> See *CWA Mobility Fund NPRM Reply* at 5; *Blooston Mobility Fund NPRM Comments* at 8-9.

intention to deploy wireless voice and broadband service in that area.<sup>691</sup> We conclude that this concern has merit and we will restrict parties from bidding for support in certain limited circumstances to assure that Mobility Fund Phase I support does not go to finance coverage that carriers would have provided in the near term without any subsidy. In particular, we will require an applicant for Mobility Fund Phase I support to certify that it will not seek support for any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012. This restriction will not prevent a provider from seeking and receiving support for a geographic area where another carrier has announced such a commitment to deploy 3G or better, but it may conserve funds and avoid displacing private investment by making a carrier that made such a commitment ineligible for Mobility Fund Phase I support with respect to the identified geographic area(s). Because circumstances are more likely to change over a longer term, we do not agree that providers should be held to statements for any time period beyond December 31, 2012.<sup>692</sup>

**d. Reverse Auction Mechanism**

411. We adopt our proposal, discussed below, to establish program and auction rules for the Mobility Fund Phase I in this proceeding, to be followed by a process conducted by the Bureaus on delegated authority identifying areas eligible for support, and seeking comment on specific detailed auction procedures to be used, consistent with this Order.<sup>693</sup> This process will be initiated by the release of a Public Notice announcing an auction date, to be followed by a subsequent Public Notice specifying the auction procedures, including dates, deadlines, and other details of the application and bidding process.

**(i) Basic Auction Design**

412. *Background.* In the *Mobility Fund NPRM*, the Commission proposed to use a single-round sealed bid reverse auction to select awardees for Mobility Fund support, determine the areas that will receive support, and establish award amounts.<sup>694</sup> The Commission also sought comment on alternatives.

413. *Discussion.* We continue to believe that our proposal to use a single-round sealed bid format is most appropriate for Mobility Fund Phase I reverse auction, although we do not make a final determination here. In the context of our spectrum auctions, the question of whether to conduct bidding in one or more rounds is typically addressed in the pre-auction development of specific procedures and we conclude that we should do the same here.

414. A variety of commenters supported a format with more than one round of bidding.<sup>695</sup> MetroPCS supported a multi-round format to allow more informed bidding.<sup>696</sup> Verizon suggested that allowing 2-3 rounds of bidding would result in more competitive bidding, claiming that more rounds would reduce costs of the program in the long-run since bidders will be generally very conservative in their first-round bids.<sup>697</sup> NE Colorado Cellular commented that a single round auction would worsen industry concentration.<sup>698</sup> T-Mobile, however, supported our proposal to conduct a single-round auction,

<sup>691</sup> GCI *Mobility Fund NPRM* Comments at 9.

<sup>692</sup> *Id.*

<sup>693</sup> See *supra* para. 329.

<sup>694</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,734, para. 58.

<sup>695</sup> Commnet *Mobility Fund NPRM* Comments at 6; MetroPCS *Mobility Fund NPRM* Comments at 11-12; MTPCS *Mobility Fund NPRM* Comments at 11; Verizon *Mobility Fund NPRM* Comments at 25.

<sup>696</sup> MetroPCS *Mobility Fund NPRM* Comments at 11-12.

<sup>697</sup> Verizon *Mobility Fund NPRM* Comments at 25.

citing simplicity and lower costs for participants, and, in contrast to NE Colorado Cellular's position, claimed that such a format may improve smaller carriers' chances of winning Mobility Fund support.<sup>699</sup>

415. We are not convinced that multiple bidding rounds are needed in order for bidders to make informed bid decisions or submit competitive bids. A Mobility Fund Phase I auction provides a mechanism by which to identify whether, and if so, at what price, providers are willing to extend coverage over relatively small unserved areas in exchange for a one-time support payment – decisions that depend upon internal cost structures, private assessments of risk, and other factors related to the providers' specific circumstances. While uncertainty about many of these considerations must be taken into account when determining a bid amount, as when making other financial commitments, the bid amounts of other auction participants are unlikely to contain information that will affect significantly the bidder's own cost assessments and bid decisions. Nor do we agree that a single round auction for Mobility Fund Phase I support, as opposed to a multiple round format, would have an adverse effect on industry structure, as asserted by one commenter. For all these reasons, we would be inclined to implement our proposal to conduct Phase I auction using a single-round sealed bid format. Nevertheless, given that under our general approach to establishing auction procedures, this issue would typically be delegated to the Bureaus to consider in connection with establishing detailed auction procedures, we leave it to the Bureaus to implement a format with more than one round, if they deem it more appropriate.

#### (ii) Application Process

416. *Background.* The *Mobility Fund NPRM* sought comment on a proposal to use a two-stage application process similar to the one we use in spectrum license auctions. Parties interested in participating at auction would submit a "short-form" application providing basic ownership information and certifying as to its qualifications to receive support.<sup>700</sup> After the auction, we would conduct a more extensive review of the winning bidders' qualifications through "long-form" applications.<sup>701</sup>

417. *Discussion.* Consistent with record support, we adopt a two-stage application process described above, noting that our experience with such a process for spectrum licensing auctions has been positive, and balances the need to collect essential information with administrative efficiency.<sup>702</sup>

418. We adopt our proposals regarding the types of information bidders should be required to disclose in Mobility Fund auction short-form applications. Thus, we will require that each auction applicant provide information to establish its identity, including disclosure of parties with ownership interests, consistent with the ownership interest disclosure required in Part 1 of our rules for applicants for spectrum licenses, and any agreements the applicant may have relating to the support to be sought through the auction.<sup>703</sup> With respect to eligibility requirements relating to ETC designation and spectrum access, applicants will be required to disclose and certify their ETC status as well as the source of the spectrum they plan to use to meet Mobility Fund obligations in the particular area(s) for which they plan to bid. Specifically, applicants will be required to disclose whether they currently hold or lease the

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<sup>698</sup> NE Colorado Cellular *Mobility Fund NPRM* Reply at 1.

<sup>699</sup> T-Mobile *Mobility Fund NPRM* Comments at 16.

<sup>700</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,731, 14,734, paras. 46, 59.

<sup>701</sup> *Id.*

<sup>702</sup> Verizon *Mobility Fund NPRM* Comments at 25; T-Mobile *Mobility Fund NPRM* Comments at 16-19.

<sup>703</sup> See 47 C.F.R. §§ 1.21001(b), 54.1005(a)(1). Applicants will only be able to make minor modifications to their short-form applications. Major amendments, for example, changes in an applicant's ownership that constitute an assignment or transfer of control, will make the applicant ineligible to bid. See 47 C.F.R. § 1.21001(d)(4).

spectrum, or have entered into a binding agreement, and have submitted an application with the Commission, to either hold or lease spectrum. Moreover, applicants will be required to certify that they will retain their access to the spectrum for at least five years from the date of award of support. We anticipate that the Bureaus will exercise their delegated authority to establish the specific form in which such information will be collected from applicants. We conclude that this approach strikes an appropriate balance in ensuring that entities are “legally, technically and financially qualified,”<sup>704</sup> as AT&T suggests, while minimizing undue burden on applicants and Commission staff.

### (iii) Bidding Process

419. *Background.* The *Mobility Fund NPRM* also sought comment on certain other aspects of the proposed bidding process, including the process used to determine winning bidders and maximize the available support.<sup>705</sup>

420. *Discussion.* We delegate authority to the Bureaus to administer the policies, programs, rules, and procedures we establish for Mobility Fund Phase I today and take all actions necessary to conduct a Phase I auction. We anticipate that the Bureaus will exercise this authority by conducting a pre-auction notice-and-comment process to establish the specific procedures for the auction. Such procedures will implement the general rule we adopt to enable the establishment of procedures for reviewing bids and determining winning bidders. The overall objective of the bidding in this context is to maximize the number of units to be covered in unserved areas given our overall budget for support. The Bureaus have discretion to adopt the best procedures to achieve this objective during the pre-auction process taking into account all relevant factors, including the implementation feasibility and the simplicity of bidder participation.

421. Several commenters address our proposal to base winning bids on the lowest per-unit bid amounts, expressing concern that it would marginalize rural areas<sup>706</sup> and suggesting instead that bids be evaluated by giving priority to the hardest-to-serve areas.<sup>707</sup> One commenter asserts that determining winners based on low bids would encourage the winner to do only the minimum required to meet service obligations.<sup>708</sup> We agree with these and other commenters’ concerns that there are areas that may not be good candidates for one-time support under Mobility Fund Phase I – and may be better served through other USF reform initiatives, such as Mobility Fund Phase II. We also recognize that some areas that benefit from Phase I support may eventually have been built out anyway, but we see significant benefit in accelerating that build-out. We disagree, however, with the suggestion that Mobility Fund Phase I would not serve rural areas generally; we believe that many rural areas will be able to benefit from Phase I support, although we acknowledge that support is not likely to be sufficient to reach the most remote areas. With respect to the concern that winners selected on the basis of a low bid will have little incentive to meet more than the minimum service obligations, we note that this issue arises regardless of selection criteria. Hence, in this R&O, we adopt performance requirements and enforcement procedures to ensure that Mobility Fund Phase I support is utilized as intended.

422. We also address here several additional aspects of the general framework for the bidding process on which we sought comment in the *Mobility Fund NPRM*.

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<sup>704</sup> AT&T *Mobility Fund NPRM* Comments at 8-9.

<sup>705</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,735-37, paras. 63-74.

<sup>706</sup> ATA *Mobility Fund NPRM* Comments at 4.

<sup>707</sup> US Cellular *Mobility Fund NPRM* Comments at 10-11; RCA *Mobility Fund NPRM* Comments at 8-9; AT&T *Mobility Fund NPRM* Comments at 4.

<sup>708</sup> Texas Statewide Coop *Mobility Fund NPRM* Comments at 6-7.

423. *Maximum Bids and Reserve Prices.* The Commission proposed a rule in the *Mobility Fund NPRM* to provide for auction procedures that establish maximum acceptable per-unit bid amounts and reserve amounts, separate and apart from any maximum opening bids, and to provide that those reserves may be disclosed or undisclosed.<sup>709</sup>

424. Commenters are divided on the issue of whether reserve prices and maximum bids are needed or desired, and if implemented, how they should be determined, but none oppose our proposal to retain the discretion to establish such amounts. Some suggest that no reserve prices are necessary because we can rely on competition to discipline bids,<sup>710</sup> while others assume that we will base any reserve prices on estimated costs.<sup>711</sup> Another proposes that we conduct bidding on a regional basis, and base reserve prices for each region on the unserved populations in each region.<sup>712</sup> We adopt our proposed rule on reserve prices and anticipate that, as detailed procedures for a Mobility Fund Phase I auction are established during the pre-auction period, the Bureaus will consider these and other proposals with respect to reserve prices in light of the specific timing of and other circumstances related to the auction.

425. *Aggregating Service Areas and Package Bidding.* In the *Mobility Fund NPRM*, the Commission proposed a rule to provide for auction procedures that permit bidders to submit bids on packages of tracts, with any specific procedures to be determined as part of the pre-auction process.<sup>713</sup> The Commission also invited comment on the use of package bidding – in which a single bid is submitted to cover a group of areas – in the Mobility Fund, and specifically mentioned some ways of implementing limited package bidding.<sup>714</sup>

426. We received no comments specifically on our proposal to address issues related to package bidding in the process of establishing detailed auction procedures and will address issues relating to package bidding as part of the pre-auction process, which is consistent with the way we approach this issue for spectrum auctions.<sup>715</sup> Interested parties will have an opportunity to comment on the desirability of package bidding in the pre-auction process in connection with the determination of the minimum area for bidding.<sup>716</sup> Potential bidders will be able to provide input on whether specific package bidding procedures would allow them to formulate and implement bidding strategies to incorporate Mobility Fund Phase I support into their business plans and capture efficiencies, and on how well those procedures will facilitate the realization of the Commission's objectives for Mobility Fund Phase I.

427. *Refinements to the Selection Mechanism to Address Limited Available Funds.* In the *Mobility Fund NPRM*, the Commission proposed a rule that would provide the discretion to establish procedures in the pre-auction process to deal with the possibility that funds may remain available after the auction has identified the last lowest per-unit bid that does not assign support exceeding the total funds

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<sup>709</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, para. 66.

<sup>710</sup> AT&T *Mobility Fund NPRM* Comments at 18-19; T-Mobile *Mobility Fund NPRM* Comments at 17.

<sup>711</sup> Cellular South et al. *Mobility Fund NPRM* Comments at 22-23; NASUCA *Mobility Fund NPRM* Comments at 7.

<sup>712</sup> Verizon *Mobility Fund NPRM* Comments at 26-27.

<sup>713</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, paras. 67-68.

<sup>714</sup> *Id.*

<sup>715</sup> See 47 C.F.R. § 1.2103(b). See also, e.g., *Auction of 700 MHz Band Licenses Scheduled for January 16, 2008; Comment Sought on Competitive Bidding Procedures For Auction 73*, Public Notice, 22 FCC Rcd 15,004, 15,010-14, paras. 17-24 (Wireless Telecom. Bur. 2007); *700 MHz Auction Procedures Public Notice*, 22 FCC Rcd at 18,179-81, paras. 138-144.

<sup>716</sup> See *supra* para. 346.

available.<sup>717</sup> The Commission also proposed a rule to give discretion to address a situation where there are two or more bids for the same per-unit amount but for different areas (“tied bids”) and remaining funds are insufficient to satisfy all of the tied bids.<sup>718</sup>

428. We adopt our proposed rules to provide the Bureaus with discretion to develop appropriate procedures to address these issues during the pre-auction notice-and-comment process. These procedures shall be consistent with our objective of awarding support so as to maximize the number of units that will gain coverage in unserved areas subject to our overall budget for support.

429. *Withdrawn Bids.* In the *Mobility Fund NPRM*, the Commission proposed that, as in the case of spectrum auctions, it would establish a rule to provide for procedures for withdrawing provisionally winning bids.<sup>719</sup> We adopt the proposed rule on withdrawn bids, but as noted in the *Mobility Fund NPRM*, we do not expect the Bureaus to permit withdrawn bids, particularly if the Mobility Fund Phase I auction will be conducted in a single round. Furthermore, we address how we will deal with auction defaults below.<sup>720</sup>

430. *Preference for Tribally-Owned or Controlled Providers.* As we do for Tribal Mobility Fund Phase I, discussed below,<sup>721</sup> we adopt a 25 percent bidding credit for Tribally-owned or controlled providers that participate in a Mobility Fund Phase I auction. The preference would act as a “reverse” bidding credit that would effectively reduce the bid amount by 25 percent for the purpose of comparing it to other bids, thus increasing the likelihood that a Tribally-owned or controlled entity would receive funding. The preference would be available solely with respect to the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support.

#### (iv) Information and Competition

431. In the *Mobility Fund NPRM*, the Commission proposed to prohibit applicants competing for support in the auction from communicating with one another regarding the substance of their bids or bidding strategies and to limit public disclosure of auction-related information as appropriate.<sup>722</sup> We adopt our proposed rules, which are similar to those used for spectrum license auctions. We anticipate that the Bureaus will seek comment during the pre-auction procedures process and decide on the details and extent of information to be withheld until the close of the auction.

#### (v) Auction Cancellation

432. The *Mobility Fund NPRM* proposed to provide discretion to delay, suspend, or cancel bidding before or after a reverse auction begins under a variety of circumstances, including natural disasters, technical failures, administrative necessity, or any other reason that affects the fair and efficient conduct of the bidding.<sup>723</sup> We received no comments on this proposal. Based on our experience with a similar rule for spectrum license auctions, we conclude that such a rule is necessary and adopt it here.

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<sup>717</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,736, para. 69.

<sup>718</sup> *Id.* at 14,736-37, para. 70.

<sup>719</sup> *Id.* at 14,737, paras. 72-74.

<sup>720</sup> *See infra* paras. 458-461.

<sup>721</sup> *See infra* para. 490.

<sup>722</sup> *Mobility Fund NPRM* at 14,737, para. 75.

<sup>723</sup> *Id.* at 14,737, para. 76.

**e. Post-Auction Long-Form Application Process**

433. After the auction has concluded, a winning bidder will be required to file a “long-form” application to qualify for and receive Mobility Fund support. Those applications will be subject to an in-depth review of the applicants’ eligibility and qualifications to receive USF support. Here, we discuss the long-form applications and the review process that will precede award of support from the Mobility Fund.

**(i) Long-Form Application**

434. *Background.* In the *Mobility Fund NPRM*, the Commission proposed that a winning bidder would be required to provide detailed information showing that it is legally, technically and financially qualified to receive support from the Mobility Fund.<sup>724</sup> The Commission sought comment on our proposal and on the specific information that winning bidders should be required to provide to make the required showings.<sup>725</sup>

435. *Discussion.* We adopt the long-form application process we proposed in the *Mobility Fund NPRM*. As we discuss above, we delegate to the Wireless and Wireline Bureaus responsibility for establishing the necessary FCC application form(s). RCA notes that “onerous” application requirements will deter smaller bidders, although it does not suggest that our specific proposals regarding the application process would be problematic.<sup>726</sup> We do not view the application process that we have outlined as “onerous,” nor do other commenters indicate that the proposals would be burdensome. Our experience with such a long-form application process for spectrum licensing auctions has been positive, balancing the need to collect essential information with administrative efficiency. Therefore, we adopt our proposal to require a post-auction long-form application as described below.

436. After bidding for Mobility Fund Phase I support has ended, the Commission will declare the bidding closed and identify and notify the winning bidders. Unless otherwise specified by public notice, within 10 business days after being notified that it is a winning bidder for Mobility Fund support, a winning bidder will be required to submit a long-form application. In the sections below, we address the information an applicant will be required to submit as part of the long-form application.

**(ii) Ownership Disclosure**

437. *Background.* In the *Mobility Fund NPRM*, we sought comment on the specific information that should be required at the long-form application stage sufficient to establish their ownership and control, as well as eligibility to receive support.<sup>727</sup>

438. *Discussion.* We will adopt for the Mobility Fund the existing ownership disclosure requirements in Part 1 of our rules that already apply to short-form applicants to participate in spectrum license auctions and long-form applicants for licenses in the wireless services.<sup>728</sup> Thus, an applicant for Mobility Fund support will be required to fully disclose its ownership structure as well as information regarding the real party- or parties-in-interest of the applicant or application.<sup>729</sup> Wireless providers that have participated in spectrum auctions will already be familiar with these requirements, and are likely to already have ownership disclosure information reports (FCC Form 602) on file with the Commission,

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<sup>724</sup> *Id.* at 14,739, paras. 79-81.

<sup>725</sup> *Id.*

<sup>726</sup> RCA *Mobility Fund NPRM* Comments at 9.

<sup>727</sup> *Mobility Fund NPRM* at 14,739-40, paras. 82-83.

<sup>728</sup> See, e.g., 47 C.F.R. § 1.2112(a). Because applicants for Mobility Fund Phase I support will not be applying for designated entity status, only subsection (a) of 47 C.F.R. § 1.2112 will be applicable.

<sup>729</sup> See 47 C.F.R. § 1.2112(a).

which may simply need to be updated. To minimize the reporting burden on winning bidders, we will allow them to use ownership information stored in existing Commission databases and update that ownership information as necessary.

### (iii) Eligibility To Receive Support

439. *ETC Designation.* As noted, with the limited exception discussed *infra*, we require any entity bidding for Mobility Fund support to be designated an ETC prior to the Mobility Fund auction short-form application deadline.<sup>730</sup> A winning bidder will be required to submit with its long-form application appropriate documentation of its ETC designation in all of the areas for which it will receive support. In the event that a winning bidder receives an ETC designation conditioned upon receiving Mobility Fund support, it may submit documentation of its conditional designation, provided that it promptly submits documentation of its final designation after its long-form application has been approved but before any disbursement of Mobility Fund funds.

440. *Access to Spectrum.* Applicants for Mobility Fund support will also be required to identify the particular frequency bands and the nature of the access (*e.g.*, licenses or leasing arrangements) on which they assert their eligibility for support. Because not all spectrum bands are capable of supporting mobile broadband, and leasing arrangements can be subject to wide variety of conditions and contingencies, before an initial disbursement of support is approved, we will assess the reasonableness of these assertions.<sup>731</sup> Should an applicant not have access to the appropriate level of spectrum, it will be found not qualified to receive Mobility Fund support and will be subject to an auction default payment.<sup>732</sup>

### (iv) Project Construction

441. *Background.* In the *Mobility Fund NPRM*, we proposed that a participant be required to submit with its long-form application a project schedule that identifies a variety of project milestones.<sup>733</sup>

442. *Discussion.* Consistent with record support, we conclude that a winning bidder's long-form application should include a description of the network it will construct with Mobility Fund support.<sup>734</sup> We will require carriers to specify on their long-form applications whether the supported project will qualify as either a 3G or 4G network, including the proposed technology choice and demonstration of technical feasibility. Applications should also include a detailed description of the network design and contracting phase, construction period, and deployment and maintenance period. We will also require applicants to provide a complete projected budget for the project and a project schedule and timeline. Recipients will be required to provide updated information in their annual reports and in the information they provide to obtain a disbursement of funds. In addition, as we do for Tribal Mobility Fund Phase I, discussed below, winning bidders of areas that include Tribal lands must comply with

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<sup>730</sup> See *supra* para. 730.

<sup>731</sup> We recognize that an applicant whose access to spectrum derives from a spectrum manager leasing arrangement pursuant to section 1.9020 of the Commission's rules may have a greater burden than other licensees and spectrum lessees to demonstrate through the execution of contractual conditions in its leasing arrangements that it has the necessary access to spectrum required to qualify for disbursement of MCAF-I support. See, *e.g.*, 47 C.F.R. §§ 1.9010, 1.9020, 1.9030.

<sup>732</sup> See *infra* para. 458.

<sup>733</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,740, para. 84.

<sup>734</sup> AT&T *Mobility Fund NPRM* Comments at 9; T-Mobile *Mobility Fund NPRM* Comments at 19. Because the long-form application will be a public document, states will have access to this information for the ETCs that are within their jurisdiction.



Tribal engagement obligations to demonstrate that they have engaged Tribal governments in the planning process and that the service to be provided will advance the goals established by the Tribe.<sup>735</sup>

(v) **Financial Security and Guarantee of Performance**

443. *Background.* In the *Mobility Fund NPRM*, we asked whether a winning bidder should be required to post financial security as a condition to receiving Mobility Fund support to ensure that it has committed sufficient financial resources to meeting the program obligations associated with such support.<sup>736</sup>

444. *Discussion.* As discussed in greater detail below, we will require winning bidders for Mobility Fund support to provide us with an irrevocable stand-by Letter of Credit (“LOC”), issued in substantially the same form as set forth in the model Letter of Credit provided in Appendix N<sup>737</sup> by a bank that is acceptable to the Commission,<sup>738</sup> in an amount equal to the amount of support as it is disbursed, plus an additional percentage of the amount of support disbursed which shall serve as a default payment, which percentage will be determined by the Bureaus in advance of the auction.

445. We received few comments on the method by which we should secure our financial commitment. MetroPCS maintains that the Commission would benefit from requiring a performance bond, because it would allow third parties to evaluate and back the bidder’s business plan and ensure that the recipient actually builds what it promises.<sup>739</sup> It suggests that a performance bond is preferable to an LOC because the latter generally requires a deposit in the amount of the obligation, which “will detract from the money available to construct and operate the system.”<sup>740</sup> In contrast, MTPCS and T-Mobile believe that a posting of financial security is unnecessary.<sup>741</sup> MTPCS comments that, in the “unlikely event” a carrier becomes insolvent, another carrier would purchase and operate the system, whereas requiring an LOC “could fatally impair a company’s ability to obtain private or public markets funding” because “existing senior lenders who finance larger portions of a company’s assets and operations would insist upon retaining their primary status.”<sup>742</sup>

446. Although we recognize the benefit of requiring winning bidders to obtain a performance bond, we think an LOC will be more effective in this instance in ensuring that we achieve the Mobility Fund’s objectives, and we are reluctant to require winning bidders to undertake the expense of obtaining both instruments. A performance bond would have the advantage of providing a source of funds to complete build-out in the unserved area in the case of a recipient’s default. However, we must first be concerned with protecting the integrity of the USF funds disbursed to the recipient. Should a recipient default on its obligations under the Mobility Fund, our priority should be to secure a return of the USF funds disbursed to it for this purpose, so that we can reassign the support consistent with our goal to maximize the number of units covered given the funds available. We also recognize that a Mobility Fund

<sup>735</sup> See *infra* para. 489.

<sup>736</sup> *Mobility Fund NPRM* at 14,740, para. 85.

<sup>737</sup> A Mobility Fund support recipient’s LOC must be issued in substantially the same form as our model LOC and, in any event, must be acceptable in all respects to the Commission.

<sup>738</sup> The rules we adopt today provide specific requirements for a bank to be acceptable to the Commission to issue the LOC. Those requirements vary for United States banks and non-U.S. banks. See 47 C.F.R. § 54.1007(a)(1).

<sup>739</sup> MetroPCS *Mobility Fund NPRM* Comments at 12-13.

<sup>740</sup> *Id.*

<sup>741</sup> MTPCS *Mobility Fund NPRM* Comments at 12; T-Mobile *Mobility Fund NPRM* Comments at 19.

<sup>742</sup> MTPCS *Mobility Fund NPRM* Comments at 12. MTPCS believes requiring performance bonds would likewise hinder applicants. *Id.* at 13.

recipient's failure to fulfill its obligations may impose significant costs on the Commission and higher support costs for USF. Therefore, we also conclude that it is necessary to adopt a default payment obligation for performance defaults. With these priorities in mind, we disagree with commenters suggesting that the posting of financial security is unnecessary or that in the event of the insolvency of the recipient of Mobility Fund support, we should rely on whichever carrier eventually purchases the recipient's system. Moreover, companies who have existing lenders regularly use LOCs in the normal course of operating their businesses and are able to maintain multiple forms of financing, thus, we give little credence to the suggestion that this requirement could fatally impair a company's ability to obtain private or public market funding.

447. Consistent with our goal of using the LOC to protect the government's interest in the funds it disburses in Mobility Fund Phase I, we will require winning bidders to obtain an LOC in an amount equal to the amount of support it receives plus an additional percentage of the amount of support disbursed to safeguard against costs to the Commission and the USF. The precise amount of this additional percentage will not exceed 20 percent and will be determined by the Bureaus as part of its process for establishing the procedures for the auction. Thus, before an application for Mobility Fund support is granted and funds are disbursed, we will require the winning bidder to provide an LOC in the amount of the first one-third of the support associated with the unserved census tract that will be disbursed upon grant of its application, plus the established additional default payment percentage. Before a participant receives the second third of its total support, it will be required to provide a second letter of credit or increase the initial LOC to correspond to the amount of that second support payment such that LOC coverage will be equal to the total support amount plus the established default payment percentage. The LOC(s) will remain open and must be renewed to secure the amounts disbursed as necessary until the recipient has met the requirements for demonstrating coverage and final payment is made. This approach will help to reduce the costs recipients incur for maintaining the LOCs, because they will only have to maintain LOCs in amounts that correspond to the actual USF funds as they are being disbursed.

448. Consistent with the purpose of the LOC, we will require recipients to maintain the LOC in place until at least 120 days after they have completed their supported expansion to unserved areas and received their final payment of Mobility Fund Phase I support. Under the terms of the LOC, the Commission will be entitled to draw upon the LOC upon a recipient's failure to comply with the terms and conditions upon which USF support was granted. The Commission, for example, will draw upon the LOC when the recipient fails to meet its required deployment milestone(s).<sup>743</sup> Failure to satisfy essential terms and conditions upon which USF support was granted or to ensure completion of the supported project, including failure to timely renew the LOC, will be deemed a failure to properly use USF support and will entitle the Commission to draw the entire amount of the LOC. Failure to comply will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their designees, which letter, attached to an LOC draw certificate, shall be sufficient for a draw on the LOC.<sup>744</sup> In addition, a recipient that fails to comply with the terms and conditions of the Mobility Fund support it is granted could be disqualified from receiving additional Mobility Fund support or other USF support.<sup>745</sup>

449. In the *Mobility Fund NPRM*, the Commission sought comment on the relative merits of performance bonds and LOCs and the extent to which performance bonds, in the event of the bankruptcy

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<sup>743</sup> Parties receiving support are required to cover at least 75 percent of the designated units in the unserved census blocks, as a condition of support. See *supra* para. 365.

<sup>744</sup> While such letter may not foreclose an appeal or challenge by the recipient, it will not prevent a draw on the LOC.

<sup>745</sup> See 47 C.F.R. §§ 54.1006(f), 54.1007(c)(1).

of the recipient of Mobility Fund support, might frustrate our goal of ensuring timely build-out of the network.<sup>746</sup> We think an LOC will better serve our objective of minimizing the possibility that Mobility Fund support becomes property of a recipient's bankruptcy estate for an extended period of time, thereby preventing the funds from being used promptly to accomplish the Mobility Fund's goals. It is well established that an LOC and the proceeds thereunder are not property of a debtor's estate under section 541 of Title 11 of the United States Code (the "Bankruptcy Code").<sup>747</sup> In a proper draw upon an LOC, the issuer honors a draft under the LOC from its own assets and not from the assets of the debtor who caused the letter of credit to be issued.<sup>748</sup> Because the proceeds under an LOC are not property of the bankruptcy estate, absent extreme circumstances such as fraud, neither the LOC nor the funds drawn down under it are subject to the automatic stay provided by the Bankruptcy Code. This is an additional reason for our decision to require recipients of Mobility Fund support to provide LOCs rather than performance bonds.

450. In the long-form application filing, we will require each winning bidder to submit a commitment letter from the bank issuing the LOC.<sup>749</sup> The winning bidder will, however, be required to have its LOC in place before it is authorized to receive Mobility Fund Phase I support and before any Mobility Fund Phase I support is disbursed. Further, at the time it submits its LOC, a winning bidder will be required to provide an opinion letter from legal counsel clearly stating, subject only to customary assumptions, limitations and qualifications, that in a proceeding under Bankruptcy Code, the bankruptcy court would not treat the LOC or proceeds of the LOC as property of winning bidder's bankruptcy estate, or the bankruptcy estate of any other bidder-related entity requesting issuance of the LOC, under section 541 of the Bankruptcy Code.<sup>750</sup>

451. We will not limit the LOC requirement to a subset of bidders that fail to meet certain criteria, such as a specified minimum credit rating, a particular minimum debt to equity ratio, or other minimum capital requirements.<sup>751</sup> We think that such criteria would require a level of financial analysis of applicants that is likely to be more complex and administratively burdensome than is warranted for a program that will provide one-time support, and could result in undue delay in funding and deployment of service. Moreover, limiting the LOC requirement to bidders below a certain level of capitalization would likely disproportionately burden small business entities, even though small entities are often less able to sustain the additional cost burden of posting financial security while still being able to compete with larger entities.

#### (vi) Other Funding Restrictions

452. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on whether participants who receive support from the Mobility Fund should be barred from receiving funds for the same activity under any other federal program, including, for example, federal grants, awards, or loans.<sup>752</sup>

453. *Discussion.* While we agree with commenters that Mobility Fund recipients might benefit if they were able to leverage resources from other federal programs, we must also take care to

<sup>746</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,741-42, paras. 88, 94.

<sup>747</sup> 11 U.S.C. § 541; see also, e.g., *Kellog v. Blue Quail Energy, Inc.*, 831 F.2d 586, 589 (5<sup>th</sup> Cir. 1987).

<sup>748</sup> *Kellog*, 831 F.2d at 589.

<sup>749</sup> The commitment letter will at a minimum provide the dollar amount of the LOC and the issuing bank's agreement to follow the terms and conditions of the Commission's model LOC, found in Appendix N.

<sup>750</sup> 11 U.S.C. § 541.

<sup>751</sup> See *Mobility Fund NPRM*, 25 FCC Rcd at 14,740, para. 85.

<sup>752</sup> *Id.* at 14,741, para. 89.

ensure that USF funds are put to their most efficient and effective use. Therefore, as noted elsewhere, we will exclude all areas from the Mobility Fund where, prior to the short-form filing deadline, any carrier has made a regulatory commitment to provide 3G or better service, or has received a funding commitment from a federal executive department or agency in response to the carrier's commitment to provide 3G or better service.<sup>753</sup> ITTA believes the Commission should not bar Mobility Fund recipients from receiving funding from other Federal programs, since recipients "should enjoy the benefit of leveraging multiple resources."<sup>754</sup> As we noted in the *Mobility Fund NPRM*, however, our intention is to direct funding to those places where deployment of mobile broadband is otherwise unlikely.<sup>755</sup>

#### (vii) Post-Auction Certifications

454. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on a number of possible certifications that we might require of a winning bidder to receive Mobility Fund support.<sup>756</sup>

455. *Discussion.* We adopt our proposal regarding post-auction certifications. Prior to receiving Mobility Fund support, an applicant will be required in its long-form application to certify to the availability of funds for all project costs that exceed the amount of support to be received from the Mobility Fund and certify that they will comply with all program requirements.

456. As discussed above, recipients of Mobility Fund support are required by statute to offer services in rural areas at rates that are reasonably comparable to those charged to customers in urban areas.<sup>757</sup> Accordingly, our post-auction long-form certifications will include a certification that the applicant will offer services in rural areas at rates that are reasonably comparable to those charged to customers in urban areas.

#### (viii) Auction Defaults

457. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on the procedures that we should apply to a winning bidder that fails to submit a long-form application by the established deadline.<sup>758</sup>

458. *Discussion. Auction Default Payments.* We will impose a default payment on winning bidders that fail to timely file a long-form application. We also conclude that such a payment is appropriate if a bidder is found ineligible or unqualified to receive Mobility Fund support, its long-form application is dismissed for any reason, or it otherwise defaults on its bid or is disqualified for any reason after the close of the auction.<sup>759</sup>

459. In its comments, T-Mobile advocates the imposition of a significant payment obligation for the withdrawal of a bid after the Mobility Fund auction closes "to discourage manipulation of the

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<sup>753</sup> Such federal funding commitments may have been made under, but are not limited to, the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP) authorized by the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA). See *CenturyLink Mobility Fund NPRM Comments* at 9; *NTCH Mobility Fund NPRM Comments* at 8 (supporting exclusion of areas that received federal loan or grant funding).

<sup>754</sup> ITTA *Mobility Fund NPRM Comments* at 17.

<sup>755</sup> See *Mobility Fund NPRM*, 25 FCC Rcd at 14,721-22, paras. 11, 14.

<sup>756</sup> *Id.* at 14,741, para. 90.

<sup>757</sup> See 47 U.S.C. § 254(b)(3).

<sup>758</sup> *Mobility Fund NPRM* at 14,739, para. 81.

<sup>759</sup> See 47 U.S.C. §§ 154(i), 254(d).

bidding process or disruption of the distribution of support.<sup>760</sup> We agree that adoption of some measure, in addition to dismissal of any late-filed application, is needed to ensure that auction participants fulfill their obligations and do not impose significant costs on the Commission and the USF. Our competitive bidding rules for spectrum license auctions provide that if, after the close of an auction, a winning bidder defaults on a payment obligation or is disqualified, the bidder is liable for a default payment.<sup>761</sup> The Wireless Bureau in advance of each spectrum license auction as part of the process for establishing the procedures for the auction sets the precise percentage to be applied in calculating the default payment.

460. Here, too, failures to fulfill auction obligations may undermine the stability and predictability of the auction process, and impose costs on the Commission and higher support costs for USF. In the case of a reverse auction for USF support, we think a default payment is appropriate to ensure the integrity of the auction process and to safeguard against costs to the Commission and the USF. We leave it to the Bureaus to consider methodologies for determining such a payment. We recognize that the size of the payment and the method by which it is calculated may vary depending on the procedures established for the auction, including auction design. In advance of the auction, the Bureaus will determine whether a default payment should be a percentage of the defaulted bid amount or should be calculated using another method, such as basing the amount on differences between the defaulted bid and the next best bid(s) to cover the same number of road miles as without the default. If the Bureaus establish a default payment to be calculated as a percentage of the defaulted bid, that percentage will not exceed 20 percent of the total amount of the defaulted bid. However it is determined, agreeing to that payment in event of a default will be a condition for participating in bidding. The Bureaus may determine prior to bidding that all participants will be required to furnish a bond or place funds on deposit with the Commission in the amount of the maximum anticipated default payment. A winning bidder will be deemed to have defaulted on its bid under a number of circumstances if it withdraws its bid after the close of the auction, it fails to timely file a long form application, it is found ineligible or unqualified to receive Mobility Fund Phase I support, its long-form application is dismissed for any reason, or it otherwise defaults on its bid or is disqualified for any reason after the close of the auction. In addition to being liable for an auction default payment, a bidder that defaults on its bid may be subject to other sanctions, including but not limited to disqualification from future competitive bidding for USF support.<sup>762</sup>

461. We distinguish here between a Mobility Fund auction applicant that defaults on its winning bid and a winning bidder whose long-form application is approved but subsequently fails or is unable to meet its minimum coverage requirement or demonstrate an adequate quality of service that complies with Mobility Fund requirements. In the latter case of a recipient's performance default, in addition to being liable for a performance default payment, the recipient will be required to repay the Mobility Fund all of the support it has received and, depending on the circumstances involved, could be disqualified from receiving any additional Mobility Fund or other USF support.<sup>763</sup> As we have discussed above, we may obtain its performance default payment and repayment of a recipient's Mobility Fund support by drawing upon the irrevocable stand-by letter of credit that recipients will be required to provide in the full amount of support received.

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<sup>760</sup> T-Mobile *Mobility Fund NPRM* Comments at 17.

<sup>761</sup> This payment consists of a deficiency portion, which would not be applicable in this context, plus an additional payment equal to between 3 and 20 percent. See *Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures*, WT Docket No. 05-211, Report and Order, 21 FCC Rcd 891, 903-04, paras. 30-32 (2006).

<sup>762</sup> See 47 C.F.R. § 1.21004(c).

<sup>763</sup> See 47 C.F.R. § 54.1006(f).

462. Undisbursed Support Payments. We received no comments on the disposition of Mobility Fund support for which a winning bidder does not timely file a long-form application. We anticipate that when a winning bidder defaults on its bid or is disqualified for any reason after the close of the auction, the funds that would have been provided to such an applicant will be used in a manner consistent with the purposes of the Universal Service program.

**f. Accountability and Oversight**

463. In the *Mobility Fund NPRM* the Commission sought comment on issues relating to the administration, management and oversight of the Mobility Fund. On a number of these issues we adopt uniform requirements that will apply to all recipients of high-cost and CAF support, including recipients of Mobility Fund Phase I support. Recipients of Phase I support will be subject generally to the reporting, audit, and record retention requirements that are discussed in the Accountability and Oversight section of this Order. We discuss below certain aspects of support disbursement, and the annual reporting and record retention requirements that will apply specifically to Mobility Fund Phase I.

**(i) Disbursing Support Payments**

464. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on our proposal to disburse support payments in one-third increments.<sup>764</sup> We received four comments reflecting a wide range of views. On one end, AT&T supports withholding the disbursement of all funds until the winning bidder certifies that it is providing the supported service throughout its designated service area.<sup>765</sup> AT&T suggests, in the alternative, disbursing one-third of the support amount once the Commission selects a provider's bid and the remaining two-thirds after completion of construction and after the selected bidder certifies that it is offering the supported service throughout its designated service area.<sup>766</sup> The Florida Commission supports the proposal set forth in the *Mobility Fund NPRM* (i.e., the one-third payment structure) "because it places the burden on carriers seeking support to demonstrate progress towards achieving the program objectives."<sup>767</sup> Verizon urges the Commission to give recipients at least 50 percent of their support upfront because in the areas targeted by the Mobility Fund, the upfront investment costs to deploy infrastructure will be significant.<sup>768</sup> Finally, T-Mobile supports disbursing the "bulk" of the Mobility Fund support when the application is granted, given difficulty in obtaining private financing in high cost areas.<sup>769</sup>

465. *Discussion.* Mobility Fund Phase I support will be provided in three installments. This approach strikes the appropriate balance between advancing funds to expand service and assuring that service is actually expanded.

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<sup>764</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,742, para. 92.

<sup>765</sup> AT&T *Mobility Fund NPRM* Comments at 20. AT&T believes this approach is "the safest course" because it will "protect against half-completed, useless networks" as well as "guarantee bidders live up to their commitments" and "best protect consumers." *Id.*

<sup>766</sup> *Id.* AT&T adds that a second disbursement at the 50 percent coverage benchmark makes little sense because that "threshold corresponds neither to a provider's costs nor to how it deploys a network, where it may take many months to reach 50 percent but only a short time thereafter to reach 100 percent coverage." *Id.*

<sup>767</sup> Florida Commission *Mobility Fund NPRM* Reply at 4.

<sup>768</sup> Verizon *Mobility Fund NPRM* Comments at 28.

<sup>769</sup> T-Mobile *Mobility Fund NPRM* Comments at 19. T-Mobile adds that, if a winning bidder fails to follow its projected build-out, it should be "required to repay any support it received [plus interest and other fines or assessments], and its affiliates should be held responsible if the bidder fails to meet its obligations." *Id.*

466. Specifically, each party receiving support will be eligible to receive from USAC a disbursement of one-third of the amount of support associated with any specific census tract once its long-form application for support is granted. Although we are not adopting an interim deployment milestone requirement, we will allow support recipients to demonstrate coverage as a basis for receiving a second support payment for an unserved area prior to completion of the project. Thus, a recipient will be eligible to receive the second third of its total support when it files a report demonstrating it has met 50 percent of its minimum coverage requirement for the census block(s) deemed unserved that are within that census tract.<sup>770</sup> While we realize that some carriers might incur higher up front project costs prior to actually being in a position to commence the provision of service to the targeted area, after the initial payment of one-third of the support amount, we will not disburse support without proof of coverage. Disbursing support based on the construction expenses incurred by the carrier instead of on actual service to an unserved area would be contrary to the Mobility Fund's objective of spurring deployment of new mobile wireless service. For this reason, to qualify for the second installment of support, a recipient will be required to demonstrate it has met 50 percent of its minimum coverage requirement using the same drive tests that will be used to analyze network coverage to provide proof of deployment at the end of the project to receive its final installment of support. The report a recipient files for this purpose will be subject to review and verification before support is disbursed. We note that input from states on recipients' filed reports could be very helpful to this process.

467. A party will receive the remainder of its support after filing with USAC a report with the required data that demonstrates that it has deployed a network covering at least the required percent of the relevant road miles in the unserved census block(s) within the census tract. This data will be subject to review and verification before the final support payment for an unserved area is disbursed to the recipient. A party's final payment would be the difference between the total amount of support based on the road miles of unserved census blocks actually covered, *i.e.*, a figure between the required percent and 100 percent of the road miles, and any support previously received.

468. Because we will disburse at least some support to qualifying applicants in advance of fulfilling their service obligations, we recognize some risk of lost funds to parties that ultimately fail to meet those obligations. However, to minimize that risk, we are requiring participants to maintain their letter(s) of credit in place until after they have completed their supported network construction and received their final payment of Mobility Fund Phase I support. In addition, we will require participants to certify that they are in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that they request disbursements.

469. As we explain above,<sup>771</sup> our purpose in this proceeding is to aggressively extend coverage, and recipients will not be allowed to receive Mobility Fund support if they fail to cover at least the required percentage of the road miles in the unserved census blocks for which they received support. Accordingly we decline the suggestion to adopt a level of service that falls short of the required percentage of coverage for which we would allow the recipient to offset its liability for repayment, because doing so would be inconsistent with our objective.<sup>772</sup>

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<sup>770</sup> Because we propose below to delegate jointly to the Wireless Bureau and the Wireline Bureau the authority to determine the method and procedures by which parties submit documents and information required to receive Mobility Fund support, we do not propose here specific filing procedures for these reports.

<sup>771</sup> See *supra* para. 28.

<sup>772</sup> Verizon *Mobility Fund NPRM* Comments at 18-19.

(ii) Annual Reports

470. *Background.* The Commission proposed in the *Mobility Fund NPRM* that parties receiving Mobility Fund support be required to file annual reports with the Commission demonstrating the coverage provided with support from the Mobility Fund for five years after qualifying for support.<sup>773</sup> The proposed reports were to include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and information regarding efforts to market the service to promote adoption among the population in those areas. In addition, annual reports were to include all drive test data that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason.

471. *Discussion.* We will adopt our proposal with some minor modifications. To the extent that a recipient of Mobility Fund support is a carrier subject to other existing or new annual reporting requirements under section 54.313 of our rules based on their receipt of universal service support under another high cost mechanism, it will be permitted to satisfy its Mobility Fund Phase I reporting requirements by filing a separate Mobility Fund annual report or by including this additional information in a separate section of its other annual report filed with the Commission.<sup>774</sup> Mobility Fund recipients choosing to fulfill their Mobility Fund reporting requirements in an annual report filed under section 54.313 must, at a minimum, file a separate Mobility Fund annual report notifying us that the required information is included the other annual report.

472. Based on our decision to define unserved units based on the linear road miles associated with unserved census blocks, we will require that a Mobility Fund Phase I recipient provide annual reports that include maps illustrating the scope of the area reached by new services, the population residing in those areas (based on Census Bureau data and estimates), and the linear road miles covered. In addition, annual reports must include all coverage test data for the supported areas that the party receives or makes use of, whether the tests were conducted pursuant to Commission requirements or any other reason. Further, annual reports will include any updated project information including updates to the project description, budget and schedule. We would welcome state input on these aspects of the annual reports of Mobility Fund Phase I recipients.

473. Because we do not impose any marketing requirements other than the advertising requirements to which designated ETCs are already subject, we do not require that annual reports include information on marketing efforts.

474. Few commenters addressed the proposal regarding annual reports. One party notes a discrepancy between the proposal set forth in the discussion in the *Mobility Fund NPRM* (and described above) and the text of the proposed rules regarding the number of years for which annual reports would be required.<sup>775</sup> Verizon suggests requiring reports from winning bidders until the project dollars are invested.<sup>776</sup> We clarify here and in the final rules that the proposal we adopt requires filing of annual reports on the use of Mobility Fund support as described for five years after the winning bidder is authorized to receive Mobility Fund support.

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<sup>773</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,731, para. 44.

<sup>774</sup> See *infra* paras. 576-614.

<sup>775</sup> AT&T *Mobility Fund NPRM* Comments at 16-17. The proposed rule section 54.1005(a) in the *Mobility Fund NPRM* stated that annual reports would be submitted for ten years. *Mobility Fund NPRM*, 25 FCC Rcd at 14,753.

<sup>776</sup> Verizon *Mobility Fund NPRM* Comments at 27.



(iii) Record Retention

475. *Background.* In the *Mobility Fund NPRM*, the Commission sought comment on what records Mobility Fund recipients should be required to retain related to their participation in the Fund.<sup>777</sup> We proposed that the record retention requirements for recipients of support apply to all agents of the recipient, and any documentation prepared for or in connection with the recipient's Mobility Fund Phase I support.<sup>778</sup> We also proposed a five-year period for record retention, consistent with the rules we previously adopted for those receiving other universal service high cost support.<sup>779</sup>

476. *Discussion.* Elsewhere in this Order, we adopt revised requirements that extend the record retention period to ten years for all recipients of high-cost and CAF support, including recipients of Mobility Fund Phase I.<sup>780</sup> We find that the new retention period will be adequate to facilitate audits of Mobility Fund program participants, with one clarification regarding the required retention period.<sup>781</sup>

477. We received two comments on this issue. Sprint suggests that all reporting and certification requirements should sunset within three years after expenditure of the support dollars received.<sup>782</sup> T-Mobile favors a period of five years for retention of records associated with Mobility Fund support.<sup>783</sup> In view of the record retention requirements we adopt for recipients of other USF high-cost and CAF support, we believe it is reasonable to apply the same retention period to recipients of Mobility Fund support.

478. We clarify, however, that for the purpose of the Mobility Fund program, the ten-year period for which records must be maintained will begin to run only after a recipient has received its final payment of Mobility Fund support. That is, because recipients will receive Mobility Fund support in up to three installments, but recipients that ultimately fail to deploy a network that meets our minimum coverage and performance requirements or otherwise fail to meet their Mobility Fund public interest obligations will be liable for repayment of all previously disbursed Mobility Fund support, we will require recipients to retain records for ten years from the receipt of the final disbursement of Mobility Fund funds.

2. Service to Tribal Lands

479. In the *Mobility Fund NPRM*, the Commission acknowledged the relatively low level of telecommunications deployment on Tribal lands and the distinct challenges in bringing connectivity to these areas.<sup>784</sup> The Commission observed that communities on Tribal lands have historically had less

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<sup>777</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,743-44, paras. 98-100.

<sup>778</sup> *Id.* at 14,744, para. 99. We further proposed that beneficiaries be required to make all such documents and records that pertain to them, contractors, and consultants working on behalf of the beneficiaries, available to the Commission's Office of Managing Director, Wireless Bureau, Wireline Bureau, and Office of Inspector General, the USF Administrator, and their auditors. *Id.*

<sup>779</sup> *Id.* at 14,744, para. 100. See 47 C.F.R. § 54.202(e) (2007). Cf. the five-year limitation on imposition of forfeitures for violations of section 220(d) of the Act. 47 C.F.R. § 1.80(c)(2).

<sup>780</sup> See *infra* para. 620.

<sup>781</sup> See *infra* para. 621; 47 C.F.R. § 54.320(b) ("All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding.").

<sup>782</sup> Sprint *Mobility Fund NPRM* Comments at 10.

<sup>783</sup> T-Mobile *Mobility Fund NPRM* Comments at 13, 20.

<sup>784</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,727, para. 33. See *supra* note 197.

access to telecommunications services than any other segment of the population.<sup>785</sup> The *Mobility Fund NPRM* also noted that Tribal lands are often in rural, high-cost areas, and present distinct obstacles to the deployment of broadband infrastructure.<sup>786</sup> The Commission observed that greater financial support therefore may be needed in order to ensure the availability of broadband in Tribal lands.<sup>787</sup> In light of the Commission's unique government-to-government relationship with Tribes and the distinct challenges in bringing communications services to Tribal lands, the Commission also noted that a more tailored approach regarding Mobility Fund support for Tribal lands may be beneficial.<sup>788</sup>

480. In April 2011, the Wireless Bureau released a Public Notice seeking comment on specific proposals that could be used in the context of a Mobility Fund to address Tribal issues.<sup>789</sup> The Public Notice sought comment on establishing: (1) possible requirements for engagement with Tribal governments prior to auction; (2) a possible preference for Tribally-owned and controlled providers; and (3) a possible mechanism to reflect Tribal priorities for competitive bidding. The Public Notice also sought comment on the timing of any Tribal Mobility Fund auction.

**a. Tribal Mobility Fund Phase I**

481. We adopt our proposal to establish a separate Tribal Mobility Fund Phase I to provide one-time support to deploy mobile broadband to unserved Tribal lands,<sup>790</sup> which have significant telecommunications deployment and connectivity challenges.<sup>791</sup> We anticipate that an auction will occur as soon as feasible after a general Mobility Fund Phase I auction, providing for a limited period of time in between so that applicants that may wish to participate in both auctions may plan and prepare for a Tribal Phase I auction after a general Phase I auction.<sup>792</sup> Our decision to establish a Tribal Mobility Fund Phase I stems from the Commission's policy regarding "Covered Locations,"<sup>793</sup> and represents our commitment to Tribal lands, including Alaska. We agree with the Alaska Commission that "[a] separate fund would indeed direct support to many areas that currently lag behind the nation in provisioning of advanced wireless services."<sup>794</sup> We allocate \$50 million from universal service funds reserves for Tribal Mobility Fund Phase I, separate and apart from the \$300 million we are allocating for the general Mobility Fund

<sup>785</sup> *Mobility Fund NPRM* at 14,727, para. 33.

<sup>786</sup> *Id.*

<sup>787</sup> *Id.*

<sup>788</sup> *Id.*

<sup>789</sup> See, generally, *Tribal Mobility Fund Public Notice*, 26 FCC Rcd 5997.

<sup>790</sup> Some carriers request a separate funding mechanism for insular areas. See, e.g., PR *Wireless Mobility Fund NPRM* Comments at 1-5. Because these areas generally do not face the same level of deployment challenges as Tribal lands, we decline to create a separate component of the Mobility Fund for them.

<sup>791</sup> *Mobility Fund NPRM*, 25 FCC Rcd at 14,727, para. 33. See, e.g., Alaska Commission *Mobility Fund NPRM* Reply at 2 (explaining that "there are more than 200 remote rural locations with low populations that are accessible only by air, water or snowmobile").

<sup>792</sup> We are mindful of commenters' views that a "separate track" should not be a "slow track," and believe that conducting a Tribal Mobility Fund Phase I auction shortly after concluding the general Mobility Fund Phase I auction will ensure that Tribal lands are not disadvantaged. See NPM and NCAI *Mobility Fund NPRM* Comments at 11-12.

<sup>793</sup> As discussed *supra*, the Commission adopted the Covered Locations exemption in 2008, in recognition that many Tribal lands have low penetration rates for basic telephone. *High-Cost Universal Service Support* et al, WC Docket No. 05-337, CC Docket No.96-45, Order, 23 FCC Rcd 8834, 8848, para. 32 (2008).

<sup>794</sup> Alaska Commission *Mobility Fund NPRM* Reply at 12.

Phase I. Providers in Tribal lands will be eligible for both the general and Tribal Mobility Fund Phase I auctions. Consistent with the approach we took with the general Mobility Fund Phase I, we delegate to the Bureaus authority to administer the policies, programs, rules and procedures to implement Tribal Mobility Fund Phase I as established today.

482. We determine that allocating \$50 million from universal service fund reserves to support the deployment of mobile broadband to unserved Tribal lands is necessary, separate and apart from the \$300 million we are allocating for Mobility Fund Phase I, because of special challenges involved in deploying mobile broadband on Tribal lands. As we have previously observed, various characteristics of Tribal lands may increase the cost of entry and reduce the profitability of providing service, including: “(1) The lack of basic infrastructure in many tribal communities; (2) a high concentration of low-income individuals with few business subscribers; (3) cultural and language barriers where carriers serving a tribal community may lack familiarity with the Native language and customs of that community; (4) the process of obtaining access to rights-of-way on tribal lands where tribal authorities control such access; and (5) jurisdictional issues that may arise where there are questions concerning whether a state may assert jurisdiction over the provision of telecommunications services on tribal lands.”<sup>795</sup> Commenters confirm that the particular challenges in deploying telecommunications services on Tribal lands remain.<sup>796</sup> As discussed below, there are areas where \$50 million in one-time support will help to extend the availability of mobile voice and broadband services.

483. We further observe that promoting the development of telecommunications infrastructure on Tribal lands is consistent with the Commission’s unique trust relationship with Tribes. As we recognized previously, “by increasing the total number of individuals, both Indian and non-Indian, who are connected to the network within a tribal community the value of the network for tribal members in that community is greatly enhanced.”<sup>797</sup> By structuring the support to benefit Tribal lands, rather than attempting to require wireless providers to distinguish between Tribal and non-Tribal customers, we will “reduc[e] the possible administrative burdens associated with implementation of the enhanced federal support, [and] eliminate a potential disincentive to providing service on Tribal lands.”<sup>798</sup>

484. Support for Tribal lands generally will be awarded on the same terms and subject to the same rules as general Mobility Fund Phase I support.<sup>799</sup> We find, however, that in some instances a more tailored approach is appropriate. For example, we adopt modest revisions to our general rules for establishing appropriate coverage units. We also adopt Tribal engagement requirements and preferences that reflect our unique relationship with Tribes. We believe that these measures should provide meaningful support to expand service to unserved areas in a way that acknowledges the unique characteristics of Tribal lands and reflects and respects Tribal sovereignty. As discussed below, we also

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<sup>795</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12,208, 12,226, para. 32 (2000) (*USF Twelfth Report and Order*).

<sup>796</sup> See *Gila River Mobility Fund NPRM* Comments at 3-4; *NNTRC Mobility Fund NPRM* Reply at 2; *NPM and NCAI Mobility Fund NPRM* Comments at 4-5; *Smith Bagley April 18 PN* Comments at 3; *Standing Rock April 18 PN* Comments at 2-6.

<sup>797</sup> *USF Twelfth Report and Order*, 15 FCC Rcd at 12,225, para. 29.

<sup>798</sup> *Id.* at 12,225-26, para. 31.

<sup>799</sup> We incorporate by reference the eligible geographic area, provider eligibility, public interest obligations, auction and post-auction processes, and program management and oversight measures established for Phase I of the Mobility Fund. To address concerns raised by commenters regarding the performance challenges posed by the reliance on satellite backhaul in Alaska, we clarify that funds may be used to construct or upgrade middle mile facilities. See *ACS Mobility Fund NPRM* Comments at 8; *GCI Mobility Fund NPRM* Comments at 2-3.

propose an ongoing support mechanism for Tribal lands in Phase II of the Mobility Fund, as well as a separate Connect America Fund mechanism to reach the most remote areas, including Tribal lands.

485. *Size of Fund.* We dedicate \$50 million in one-time support for the Tribal Mobility Fund Phase I, which should help facilitate mobile deployment in unserved areas on Tribal lands. This amount is in addition to the \$300 million to be provided under the general Mobility Fund Phase I, for which qualifying Tribal lands would also be eligible, and is in addition to the up to \$100 million in ongoing support being dedicated to Tribal lands in the Tribal Mobility Fund Phase II.<sup>800</sup> We believe that a one-time infusion of \$50 million through the Tribal Mobility Fund can make a difference in expanding the availability of mobile broadband in Tribal lands unserved by 3G. The \$50 million in one-time support we allocate today is approximately 25 percent of the ongoing support awarded to competitive ETCs serving Covered Locations in 2010. The more targeted nature of this support will enhance the impact of this significant one-time addition to current support levels. At the same time, this funding level is consistent with our commitment to fiscal responsibility and the varied objectives we have for our limited funds, including our proposals for ongoing support for mobile services as established below. We also observe that, although \$50 million reflects a smaller percentage of total Mobility Fund support than suggested by some commenters,<sup>801</sup> the \$300 million we adopt today is at the upper end of our proposed range and, thus, \$50 million is roughly equivalent to what many commenters suggested. On balance, we believe that there is an opportunity for entities to obtain meaningful support – both through the Tribal and general Mobility Fund Phase I auctions, in addition to the ongoing support mechanisms – in order to accelerate mobile broadband deployment on Tribal lands.

486. *Mechanism To Award Support.* Consistent with our general approach to awarding Phase I support, to maximize consumer benefits we generally will award support to one provider per qualifying area by reverse auction and will only award support to more than one provider per area where doing so would allow us to cover more total units given the budget constraint.<sup>802</sup> We recognize that some commenters suggested alternative mechanisms for awarding support to Tribal lands. These included a procurement model under which Tribes would solicit bids for service,<sup>803</sup> a scoring mechanism the Commission could use to evaluate proposals according to certain criteria (generally reflective of need),<sup>804</sup> and a process to give Tribal carriers first priority in receiving funds.<sup>805</sup>

487. We agree that it is essential to award support in a way that respects and reflects Tribal needs. To that end, and as discussed below, we adopt Tribal engagement obligations to ensure that needs are identified and appropriate solutions are developed. We also adopt a bidding credit for Tribally-owned

<sup>800</sup> See *infra* para. 494.

<sup>801</sup> See, e.g., *Gila River Mobility Fund NPRM Comments* at 7 (recommending 20 percent allocation of one-time Mobility Fund to Tribal lands); *NTTA Mobility Fund NPRM Comments* at 7 (recommending up to 30 percent allocation); *NPM and NCAI Mobility Fund NPRM Comments* at 8 (recommending 33 percent allocation).

<sup>802</sup> We note that in certain limited circumstances, depending on the bidding at auction, allowing small overlaps in support could result in greater overall coverage.

<sup>803</sup> *NTTA Mobility Fund NPRM Comments* at 14-15; *NTTA April 18 PN Comments* at 7-8.

<sup>804</sup> *Standing Rock Sioux April 18 PN Comments* at 5-7.

<sup>805</sup> *NPM and NCAI Mobility Fund NPRM Comments* at 11. Several commenters note that the Commission should also undertake efforts to identify spectrum to more effectively serve Tribal lands. See *Gila River Mobility Fund NPRM Comments* at 11-12; *NPM and NCAI Mobility Fund NPRM Comments* at 6; *NTTA Mobility Fund NPRM Comments* at 4. We note that we have raised those issues in the *Spectrum over Tribal Lands* proceeding, and recognize that proceeding's importance. See *Improving Communications Services for Native Nations by Promoting Greater Utilization of Spectrum over Tribal Lands*, WT Docket No. 11-40, Notice of Proposed Rulemaking, 26 FCC Rcd 2623 (2011) (*Spectrum over Tribal Lands NPRM*).